

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. the  
State Engineer,

Plaintiff,

v.

ROMAN ARAGON, et al.,

Defendants.

69cv07941 BB-ACÉ

Rio Chama Adjudication

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**STATUS REPORT AND RECOMMENDATIONS CONCERNING  
SCHEDULING ORDERS ON INDIAN CLAIMS**

Pursuant to the Special Master's *Notice and Order Setting Multi-Case Status and Scheduling Conference on Pueblo Claims*, entered January 28, 2004 in New Mexico ex rel. State Engineer v. Aragon, No. 69cv07941-BB [Doc. No. 7395], New Mexico ex rel. State Engineer v. Abbott, Nos. 68cv07488-BB & 70cv08650-BB consolidated [Doc. No. 2420], and New Mexico ex rel. State Engineer v. Abeyta, Nos. 69cv07896-BB & 69cv07939-BB [Doc. No. 4385], the United States, after consultation with counsel for the State of New Mexico, ex rel. State Engineer, and the Pueblos of Taos, San Ildefonso, Santa Clara, and San Juan,<sup>1</sup> hereby submits a recommended outline schedule for proceedings on Pueblo claims in the specified three adjudications.

1. Although these three adjudications are not formally consolidated, they, and other pending water adjudications in the State of New Mexico, make competing

<sup>1</sup> Counsel for Pojoaque Pueblo was unavailable for comment on this document. The attorney contacted for Nambé Pueblo, which Pueblo has only a de minimis interest in the Abbott case which is already the subject of a settlement agreement, indicated that he does not represent the Pueblo in any of cases in which this document is submitted.

demands on the available litigation and negotiation resources of the United States, the State of New Mexico ("State"), and, to a varying extent, the involved Indian Pueblos. Accordingly, the United States supports and recommends a process by which scheduling in each case may take account of the resource demands of the other cases and is this date filing an identical status report and recommendations in all three cases.

2. The governmental entities involved in these cases, including the United States, the State, and the Pueblos, must generally go through a legislative funding cycle in order to secure sufficient resources to respond to new active litigation deadlines imposed by the Court. When there are no such deadlines for a particular case, the limited resources available for water adjudications tend to be reallocated to more active cases. When new deadlines are established, it may take an extended period to obtain new funding through the legislative process. In the case of the United States, for example, and depending on the time of year when notice is given of the new deadline, it may take as much as 18 months for sufficient funding to be obtained from Congress, or re-allocated from other cases.

**Proposal to Defer Proceedings on Pueblo Claims in the Rio Chama Adjudication**

3. The United States, the State, and San Juan Pueblo report that their respective resources do not permit simultaneous litigation of that Pueblo's water rights in both New Mexico ex rel. State Engineer v. Aragon, the Rio Chama adjudication, and New Mexico ex rel. State Engineer v. Abbott, the Rio Santa Cruz/Rio Truchas adjudication. Since there is a pending scheduling order governing the adjudication of Pueblo claims in the Abbott case (*Scheduling Order on Pueblo Claims*, filed December 17, 1998 [Doc. No. 2215]), all three of these parties favor preparing to litigate San Juan Pueblo's water rights in

that case first, and to defer any scheduling of proceedings on the Pueblo's water rights in the Aragon case for the time being.

**Proposal Concerning Pueblo Claims Proceedings in the Santa Cruz/Truchas Adjudication**

4. As reported in the *Status Report on Settlement of Indian Claims* filed December 31, 2003 [Doc. No. 2419], in the Abbott (Rio Santa Cruz/Rio Truchas) adjudication, the United States transmitted to other parties a proposal to settle the last remaining issue in Pueblo Claims Subproceeding 1 in that case in October of 2003. Paragraph 4.3 of the December 17, 1998, *Scheduling Order*, indicates that Pueblo Claims Subproceeding 2, which will adjudicate San Juan Pueblo's claimed water rights that are based on past or present uses of diverted water, should commence once Subproceeding 1 is completed. There have been some responses to the United States settlement proposal, however, to date, the State has been unable to allocate resources adequately to review the United States' proposal due to the demands of global negotiations to settle the water right claims of the Pueblos of San Ildefonso, Nambe, Pojoaque, and Tesuque in New Mexico ex rel. State Engineer v. Aamodt, No. 66cv06639 MV/LCS, and the intensive negotiation schedule to resolve the water right claims of Taos Pueblo in the Abeyta (Rio Pueblo de Taos/Rio Hondo) adjudication. Those competing resource demands from the Aamodt and Abeyta cases are on-going, but may permit the State to complete its review of the United States' Abbott Subproceeding 1 proposal in time for that Subproceeding to be completed within the next year. Toward that end, the United States, the State, and the Pueblo of San San Juan, propose that the Special Master establish the following schedule:

- August 31, 2004      Deadline for parties to Abbott Pueblo Claims Subproceeding 1 to provide the United States with written comments on the October 2003 settlement proposal.
- October 14, 2004      Status Conference before the Special Master to address the status of the settlement negotiations and whether the appointment of a United States Magistrate Judge as mediator would help to conclude the matter.
- March 1, 2005      Deadline, subject to reconsideration by the Special Master upon motion for good cause, for the United States and San Juan Pueblo to file subproceeding complaints, pursuant to Part 3 of the Special Master's December 17, 1998, *Scheduling Order*, stating the water rights to be claimed on behalf of San Juan Pueblo in Pueblo Claims Subproceeding 2.

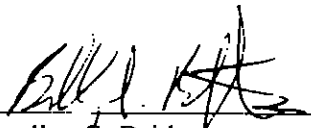
The Pueblos of Santa Clara and San Ildefonso urge that the deadline for comments on the United States' October 2003 proposal be established earlier than August 31, 2004.

**Proposal Concerning Pueblo Claims Proceedings in the Taos/Ilondo Adjudication**

5.      The United States, the State, and Taos Pueblo report that the intensive negotiations to settle Pueblo Claims in the Abeyta case are on-going, occasionally volatile, and highly sensitive to pressures that could be created by a resumption of active litigation. These three parties reserve their respective rights to petition the Special Master to establish a litigation schedule at any time, but respectfully recommend that no such schedule be established at present.

Dated this 27<sup>th</sup> day of February, 2004.

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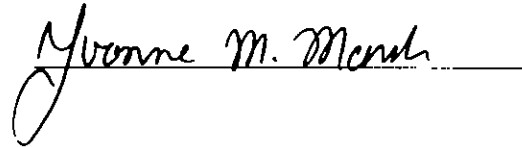
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2004, I mailed copies of the foregoing  
*Status Report* to all persons on the attached service list.

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